

**OIL AND GAS AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to the pooling of oil and gas interests.

**Highlighted Provisions:**

This bill:

- ▶ authorizes the Board of Oil, Gas, and Mining to make a pooling order retroactive under certain circumstances;
- ▶ allows existing pooling orders to apply to additional wells drilled in the same drilling unit under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**40-6-6.5**, as last amended by Laws of Utah 2017, Chapter 220

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **40-6-6.5** is amended to read:

**40-6-6.5. Pooling of interests for the development and operation of a drilling unit**



28 -- Board may order pooling of interests -- Payment of costs and royalty interests --

29 **Monthly accounting.**

30 (1) Two or more owners within a drilling unit may bring together their interests for the  
31 development and operation of the drilling unit.

32 (2) (a) In the absence of a written agreement for pooling, including a joint operating  
33 agreement, the board may enter an order pooling all interests in the drilling unit for the  
34 development and operation of the drilling unit.

35 (b) The order shall be made upon terms and conditions that are just and reasonable.

36 (c) The board may adopt terms appearing in [~~an~~] a joint operating agreement:

37 (i) for the drilling unit that is in effect between the consenting owners;

38 (ii) submitted by any party to the proceeding; or

39 (iii) submitted by its own motion.

40 (3) (a) Operations incident to the drilling of a well upon any portion of a drilling unit  
41 covered by a pooling order shall be deemed for all purposes to be the conduct of the operations  
42 upon each separately owned tract in the drilling unit by the several owners.

43 (b) The portion of the production allocated or applicable to a separately owned tract  
44 included in a drilling unit covered by a pooling order shall, when produced, be deemed for all  
45 purposes to have been produced from that tract by a well drilled on it.

46 (4) (a) (i) Each pooling order shall provide for the payment of just and reasonable costs  
47 incurred in the drilling and operating of the drilling unit, including:

48 (A) the costs of drilling, completing, equipping, producing, gathering, transporting,  
49 processing, marketing, and storage facilities;

50 (B) reasonable charges for the administration and supervision of operations; and

51 (C) other costs customarily incurred in the industry.

52 (ii) An owner is not liable under a pooling order for costs or losses resulting from the  
53 gross negligence or willful misconduct of the operator.

54 (b) Each pooling order shall provide for reimbursement to the consenting owners for  
55 any nonconsenting owner's share of the costs out of production from the drilling unit  
56 attributable to the nonconsenting owner's tract.

57 (c) Each pooling order shall provide that each consenting owner shall own and be  
58 entitled to receive, subject to royalty or similar obligations:

59 (i) the share of the production of the well applicable to the consenting owner's interest  
60 in the drilling unit; and

61 (ii) unless the consenting owner has agreed otherwise, the consenting owner's  
62 proportionate part of the nonconsenting owner's share of the production until costs are  
63 recovered as provided in Subsection (4)(d).

64 (d) (i) Each pooling order shall provide that each nonconsenting owner shall be entitled  
65 to receive, subject to royalty or similar obligations, the share of the production of the well  
66 applicable to the nonconsenting owner's interest in the drilling unit after the consenting owners  
67 have recovered from the nonconsenting owner's share of production the following amounts less  
68 any cash contributions made by the nonconsenting owner:

69 (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond  
70 the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and  
71 piping;

72 (B) 100% of the nonconsenting owner's share of the estimated cost to plug and  
73 abandon the well as determined by the board;

74 (C) 100% of the nonconsenting owner's share of the cost of operation of the well  
75 commencing with first production and continuing until the consenting owners have recovered  
76 all costs; and

77 (D) an amount to be determined by the board but not less than 150% nor greater than  
78 400% of the nonconsenting owner's share of the costs of staking the location, wellsite  
79 preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or  
80 plugging back, testing, and completing, and the cost of equipment in the well to and including  
81 the wellhead connections.

82 (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is  
83 that interest which would have been chargeable to the nonconsenting owner had the  
84 nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the  
85 well from commencement of the operation.

86 (iii) A reasonable interest charge may be included if the board finds it appropriate.

87 (e) If there is any dispute about costs, the board shall determine the proper costs.

88 (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other  
89 contract for the development of oil and gas, the pooling order shall provide that the consenting

90 owners shall pay any royalty interest or other interest in the tract not subject to the deduction of  
91 the costs of production from the production attributable to that tract.

92 (6) (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or  
93 other contract for the development of oil and gas, the pooling order shall provide that the  
94 nonconsenting owner shall receive as a royalty:

95 (i) the acreage weighted average landowner's royalty based on each leased fee and  
96 privately owned tract within the drilling unit, proportionately reduced by the percentage of the  
97 nonconsenting owner's interest in the drilling unit; or

98 (ii) if there is no leased fee or privately owned tract within the drilling unit other than  
99 the one owned by the nonconsenting owner, 16-2/3% proportionately reduced by the  
100 percentage of the nonconsenting owner's interest in the drilling unit.

101 (b) The royalty shall be:

102 (i) determined prior to the commencement of drilling; and

103 (ii) paid from production attributable to each tract until the consenting owners have  
104 recovered the costs specified in Subsection (4)(d).

105 (7) Once the consenting owners have recovered the costs, as described in Subsection  
106 (6)(b)(ii), the royalty shall be merged back into the nonconsenting owner's working interest and  
107 shall be terminated.

108 (8) The operator of a well under a pooling order in which there is a nonconsenting  
109 owner shall furnish the nonconsenting owner with monthly statements specifying:

110 (a) costs incurred;

111 (b) the quantity of oil or gas produced; and

112 (c) the amount of oil and gas proceeds realized from the sale of the production during  
113 the preceding month.

114 (9) Each pooling order shall provide that when the consenting owners recover from a  
115 nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

116 (a) the relinquished interest of the nonconsenting owner shall automatically revert to  
117 him;

118 (b) the nonconsenting owner shall from that time:

119 (i) own the same interest in the well and the production from it; and

120 (ii) be liable for the further costs of the operation as if he had participated in the initial

121 drilling and operation; and

122 (c) costs are payable out of production unless otherwise agreed between the  
123 nonconsenting owner and the operator.

124 (10) Each pooling order shall provide that in any circumstance where the  
125 nonconsenting owner has relinquished his share of production to consenting owners or at any  
126 time fails to take his share of production in-kind when he is entitled to do so, the  
127 nonconsenting owner is entitled to:

128 (a) an accounting of the oil and gas proceeds applicable to his relinquished share of  
129 production; and

130 (b) payment of the oil and gas proceeds applicable to that share of production not taken  
131 in-kind, net of costs.

132 (11) (a) A pooling order may be made effective retroactively to the date of first  
133 production of a well to which ~~[it]~~ the pooling order applies, ~~[even if]~~ subject to Subsection  
134 (11)(b).

135 (b) If the retroactive date predates the board's order establishing the drilling unit, ~~[it]~~  
136 the retroactive date is authorized only if:

137 (i) no party to the board's proceeding objects to the retroactive application[-]; or

138 (ii) an objection is received by the board and the board finds a party has engaged in  
139 inequitable conduct prejudicing another party's correlative right.

140 ~~[(b)]~~ (c) A pooling order made retroactive under this section is binding upon a party  
141 owning an interest in the drilling unit who receives proper notice of the board's proceeding.

142 (12) The terms and conditions of the board's initial order pooling all interests in a  
143 drilling unit, including the terms and conditions of a joint operating agreement as adopted by  
144 the board, shall apply to all subsequently drilled wells in the drilling unit, except as modified  
145 by:

146 (a) an accounting for actual costs incurred for each subsequently drilled well in the  
147 drilling unit;

148 (b) an accounting for the consenting or nonconsenting status of the owner of each  
149 subsequently drilled well in the drilling unit; and

150 (c) the board after the filing of and hearing upon a petition filed by an affected owner  
151 desiring a modification.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**